

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GWENDOLYN LOUISE GORDEN,) Case No. CV 13-01482-JEM
Plaintiff,)
v.)
CAROLYN W. COLVIN,) MEMORANDUM OPINION AND
Acting Commissioner of Social Security,) ORDER REVERSING DECISION OF
Defendant.) THE COMMISSIONER OF SOCIAL
SECURITY

PROCEEDINGS

On August 28, 2013, Gwendolyn Louise Gorden (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Supplemental Security Income benefits. The Commissioner filed an Answer on December 24, 2013. On February 14, 2014, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

24 Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this
25 Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record
26 (“AR”), the Court concludes that the Commissioner’s decision must be reversed and
27 remanded for further proceedings in accordance with this Memorandum Opinion and
28 Order and with law.

BACKGROUND

Plaintiff is a 49-year-old female who applied for Supplemental Security Income benefits on July 24, 2009, alleging disability beginning November 1, 2006. (AR 9.) The ALJ determined that Plaintiff has not engaged in substantial gainful activity since July 24, 2009, the application date. (AR 11.)

Plaintiff's claim was denied initially on November 17, 2009 and on reconsideration on June 10, 2010. (AR 9.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Danny Pittman on November 8, 2011, in San Bernardino, California. (AR 9.) Claimant appeared and testified at the hearing and was represented by counsel. (AR 9.) Vocational expert ("VE") Troy L. Scott also appeared and testified at the hearing. (AR 9.)

The ALJ issued an unfavorable decision on January 19, 2012. (AR 9-15.) The Appeals Council denied review on June 25, 2013. (AR 1-3.)

DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as grounds for reversal and remand:

1. Whether the ALJ properly considered Plaintiff's testimony and made proper credibility findings.
2. Whether the ALJ properly considered Plaintiff's treating physician's opinion and properly developed the record.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means “more than a mere scintilla,’ but less than a preponderance.” *Saelee v. Chater*, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting

1 Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such
 2 relevant evidence as a reasonable mind might accept as adequate to support a
 3 conclusion.” Richardson, 402 U.S. at 401 (internal quotation marks and citation
 4 omitted).

5 This Court must review the record as a whole and consider adverse as well as
 6 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).
 7 Where evidence is susceptible to more than one rational interpretation, the ALJ’s
 8 decision must be upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599
 9 (9th Cir. 1999). “However, a reviewing court must consider the entire record as a whole
 10 and may not affirm simply by isolating a ‘specific quantum of supporting evidence.’”
 11 Robbins, 466 F.3d at 882 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir.
 12 1989)); see also Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007).

13 THE SEQUENTIAL EVALUATION

14 The Social Security Act defines disability as the “inability to engage in any
 15 substantial gainful activity by reason of any medically determinable physical or mental
 16 impairment which can be expected to result in death or . . . can be expected to last for a
 17 continuous period of not less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A),
 18 1382c(a)(3)(A). The Commissioner has established a five-step sequential process to
 19 determine whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920.

20 The first step is to determine whether the claimant is presently engaging in
 21 substantial gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the
 22 claimant is engaging in substantial gainful activity, disability benefits will be denied.
 23 Bowen v. Yuckert, 482 U.S. 137, 140 (1987). Second, the ALJ must determine whether
 24 the claimant has a severe impairment or combination of impairments. Parra, 481 F.3d at
 25 746. An impairment is not severe if it does not significantly limit the claimant’s ability to
 26 work. Smolen, 80 F.3d at 1290. Third, the ALJ must determine whether the impairment
 27 is listed, or equivalent to an impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I
 28 of the regulations. Parra, 481 F.3d at 746. If the impairment meets or equals one of the

1 listed impairments, the claimant is presumptively disabled. Bowen v. Yuckert, 482 U.S.
 2 at 141. Fourth, the ALJ must determine whether the impairment prevents the claimant
 3 from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

4 Before making the step four determination, the ALJ first must determine the
 5 claimant's residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is
 6 "the most [one] can still do despite [his or her] limitations" and represents an assessment
 7 "based on all the relevant evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The
 8 RFC must consider all of the claimant's impairments, including those that are not severe.
 9 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

10 If the claimant cannot perform his or her past relevant work or has no past
 11 relevant work, the ALJ proceeds to the fifth step and must determine whether the
 12 impairment prevents the claimant from performing any other substantial gainful activity.
 13 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000). The claimant bears the burden of
 14 proving steps one through four, consistent with the general rule that at all times the
 15 burden is on the claimant to establish his or her entitlement to benefits. Parra, 481 F.3d
 16 at 746. Once this *prima facie* case is established by the claimant, the burden shifts to
 17 the Commissioner to show that the claimant may perform other gainful activity.
 18 Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support a finding that a
 19 claimant is not disabled at step five, the Commissioner must provide evidence
 20 demonstrating that other work exists in significant numbers in the national economy that
 21 the claimant can do, given his or her RFC, age, education, and work experience. 20
 22 C.F.R. § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is
 23 disabled and entitled to benefits. Id.

24 THE ALJ DECISION

25 In this case, the ALJ determined at step one of the sequential process that Plaintiff
 26 has not engaged in substantial gainful activity since July 24, 2009, the application date.
 27 (AR 11.)

1 At step two, the ALJ determined that Plaintiff has the following medically
2 determinable severe impairments: headaches; pseudo seizures; hypertension. (AR 11-
3 12.) The ALJ also acknowledged the medically determinable mental impairment of
4 memory loss and forgetfulness which the ALJ found was nonsevere.

5 At step three, the ALJ determined that Plaintiff does not have an impairment or
6 combination of impairments that meets or medically equals the severity of one of the
7 listed impairments. (AR 12.)

8 The ALJ then found that Plaintiff has the RFC to perform a full range of work at all
9 exertional levels but with the following non-exertional limitations:

10 . . . able to frequently balance, stoop, kneel, crouch, crawl and climb
11 ramps or stairs. Precluded from climbing ladders, ropes or scaffolds
12 and should avoid concentrated exposure to hazards (seizure
13 precautions).

14 (AR 12-14.) In determining this RFC, the ALJ made an adverse credibility determination.
15 (AR 13.)

16 At step four, the ALJ found that Plaintiff is able to perform past relevant work as a
17 clerk typist. (AR 14.) The ALJ also found that considering Claimant's age, education
18 and RFC, there are jobs that exist in significant numbers in the national economy that
19 Claimant can perform, including industrial cleaner, hand packager, and dry cleaning
20 worker. (AR 14-15.)

21 Consequently, the ALJ found that Claimant was not disabled, within the meaning
22 of the Social Security Act. (AR 15.)

23 DISCUSSION

24 The ALJ decision must be reversed. The ALJ did not properly consider the
25 medical evidence. The ALJ failed to mention or address Plaintiff's treating source
26 opinions which if credited are work-preclusive. The ALJ also failed to fully develop the
27 record.

1 **I. THE ALJ FAILED TO CONSIDER THE MEDICAL EVIDENCE**

2 Plaintiff contends that the ALJ erred by failing to consider the treating source
 3 opinions of Dr. Lori Uber-Zac and Dr. Christine Bierdrager. The Court agrees.

4 **A. Relevant Federal Law**

5 In evaluating medical opinions, the case law and regulations distinguish among
 6 the opinions of three types of physicians: (1) those who treat the claimant (treating
 7 physicians); (2) those who examine but do not treat the claimant (examining physicians);
 8 and (3) those who neither examine nor treat the claimant (non-examining, or consulting,
 9 physicians). See 20 C.F.R. §§ 404.1527, 416.927; see also *Lester v. Chater*, 81 F.3d
 10 821, 830 (9th Cir. 1995). In general, an ALJ must accord special weight to a treating
 11 physician's opinion because a treating physician "is employed to cure and has a greater
 12 opportunity to know and observe the patient as an individual." *Magallanes v. Bowen*,
 13 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If a treating source's opinion on the
 14 issues of the nature and severity of a claimant's impairments is well-supported by
 15 medically acceptable clinical and laboratory diagnostic techniques, and is not
 16 inconsistent with other substantial evidence in the case record, the ALJ must give it
 17 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

18 Where a treating doctor's opinion is not contradicted by another doctor, it may be
 19 rejected only for "clear and convincing" reasons. *Lester*, 81 F.3d at 830. However, if the
 20 treating physician's opinion is contradicted by another doctor, such as an examining
 21 physician, the ALJ may reject the treating physician's opinion by providing specific,
 22 legitimate reasons, supported by substantial evidence in the record. *Lester*, 81 F.3d at
 23 830-31; see also *Orn*, 495 F.3d at 632; *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
 24 2002). Where a treating physician's opinion is contradicted by an examining
 25 professional's opinion, the Commissioner may resolve the conflict by relying on the
 26 examining physician's opinion if the examining physician's opinion is supported by
 27 different, independent clinical findings. See *Andrews v. Shalala*, 53 F.3d 1035, 1041
 28 (9th Cir. 1995); *Orn*, 495 F.3d at 632. Similarly, to reject an uncontradicted opinion of an

1 examining physician, an ALJ must provide clear and convincing reasons. Bayliss v.
2 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's opinion is
3 contradicted by another physician's opinion, an ALJ must provide specific and legitimate
4 reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot by
5 itself constitute substantial evidence that justifies the rejection of the opinion of either an
6 examining physician or a treating physician"; such an opinion may serve as substantial
7 evidence only when it is consistent with and supported by other independent evidence in
8 the record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

9 **B. Analysis**

10 Plaintiff Gwendolyn Gorden who has hypertension suffered two seizures or
11 blackouts in 2006, one in 2007 and another in 2010. (AR 13.) Her primary care
12 physician thought the seizures could be due to her hypertension medication. (AR 13,
13 12.) She was started on Topamax but still has experienced numbness, tingling and
14 auras. (AR 13.) Nonetheless, her EKGs and brain scans have been normal. (AR 13,
15 14.) The ALJ found that Claimant has the medically determinable severe impairments of
16 headaches, pseudo seizures and hypertension. (AR 11.) The ALJ also found no
17 exertional limitations but precluded certain activities as seizure precautions. (AR 12.)
18 The ALJ's RFC imposes no mental limitations.

19 1. Dr. Bierdrager

20 Plaintiff testified she has confusion and memory problems. (AR 12.) The ALJ
21 acknowledged Claimant has the medically determinable mental impairments of memory
22 loss and forgetfulness but found those impairments result in no significant functional
23 limitations and concluded that they were nonsevere. (AR 11.) The ALJ, however, does
24 not cite to any specific evidence supporting his wholly conclusory nonseverity
25 determination.

26 There is contrary evidence. On August 25, 2011, Dr. Christine Bierdrager, Ph.D.,
27 L.P., for Rachel Viers, M.A., completed a Medical Opinion Re: Ability To Work-Related
28 Activities (Mental). (AR 414-415.) Dr. Bierdrager assessed Plaintiff as having "no

1 useful ability to function" in maintaining regular attendance, completing a normal work
 2 week without interruptions from psychologically based symptoms and performing at a
 3 competitive pace. (AR 414.) Dr. Bierdrager also assessed Claimant as being "unable to
 4 meet competitive standards" in remembering work-like procedures, sustaining an orderly
 5 routine without supervision, accepting instructions, responding to changes in the work
 6 setting and dealing with normal work stress. (AR 414-415.) She also found Plaintiff
 7 seriously limited in understanding, remembering and carrying out short, simple
 8 instructions. (AR 414.) Dr. Bierdrager specifically noted Plaintiff has a "very poor
 9 memory" and "trouble concentrating." (AR 415.) Dr. Bierdrager opined Plaintiff would
 10 miss work more than four days a month. (AR 415.) Dr. Bierdrager's assessment was
 11 based on "case notes/supervision." (AR 415.)

12 The ALJ did not discuss or even mention Dr. Bierdrager's assessment. This was
 13 error and the error was not harmless because if credited Dr. Bierdrager's assessment
 14 would be work-preclusive. See Stout v. Comm'r, Soc. Sec. Adm, 454 F.3d 1050, 1055
 15 (9th Cir. 2006) (error to be harmless must be "inconsequential to the ultimate
 16 nondisability determination"). The Commissioner contends that Dr. Bierdrager did not
 17 provide any objective basis for her opinions but this Court is limited to reviewing the
 18 reasons contained in the ALJ decision. Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir.
 19 2003) ("We are constrained to review the reasons the ALJ asserts"). The Commissioner
 20 questions whether Dr. Bierdrager was a treating physician and notes she is not
 21 mentioned anywhere else in the record but this sort of ambiguity in the record generally
 22 triggers the ALJ's duty to inquire and to develop the record more fully. Tonapetyan v.
 23 Halter, 242 F.3d 1144, 1150 (9th Cir. 2001); Smolen, 80 F.3d at 1288; Brown v. Heckler,
 24 713 F.2d 441, 443 (9th Cir. 1983).

25 The Commissioner next contends that the ALJ was entitled to rely on the opinion
 26 of State reviewing physician Dr. Gregg who found no medically determinable mental
 27 impairments based on his review of the medical records through the date of his report,
 28 October 29, 2009. (AR 377.) Because Dr. Gregg relied on independent clinical

1 evidence in the record, the Commissioner observes that Dr. Gregg's non-treating, non-
 2 examining opinion constitutes substantial evidence. Bray v. Astrue, 554 F.3d 1219,
 3 1221-22, 1227-28 (9th Cir. 2009); Thomas, 278 F.3d at 958-59; Andrews, 53 F.3d at
 4 1041-42. The Commissioner's arguments, however, are insufficient under the law to
 5 disregard the opinion of Dr. Bierdrager. The Commissioner's cases do not stand for the
 6 proposition that the ALJ can ignore the opinion of a treating physician. Indeed, as
 7 Thomas teaches, the ALJ must set forth specific legitimate reasons for rejecting her
 8 opinion, after "setting out a detailed and thorough summary of the facts and conflicting
 9 clinical evidence." 278 F.3d at 957. Social Security regulations indicate that every
 10 medical opinion will be evaluated, 20 C.F.R. § 404.1527(d)(2). SSR 96-2p states that
 11 "the notice of determination or decision must contain specific reasons for the weight
 12 given to the treating source's medical opinion, supported by the evidence in the case
 13 record, and must be sufficiently specific to make clear to any subsequent reviewers the
 14 weight the adjudicator gave to the treating source's opinion and the reasons for that
 15 weight."

16 Dr. Gregg's opinion, moreover was dated October 29, 2009 (AR 377), well before
 17 the August 25, 2011 opinion of Dr. Bierdrager, and thus he did not have the benefit of
 18 seeing the latter report. Dr. Gregg's opinion also is a check box opinion relying on
 19 another State reviewing physician's evaluation of the medical records (AR 376) which
 20 the Court discredits below. More to the point, the ALJ failed to mention Dr. Bierdrager's
 21 report or give any reasons or cite to any evidence for rejecting it. The fact that the ALJ
 22 could have rejected the report for lack of objective evidence and/or on the basis of
 23 Dr. Gregg's opinion is not a legally proper basis for affirming the ALJ decision. Connett,
 24 340 F.3d at 874. The ALJ was obliged to present specific legitimate reasons for
 25 rejecting conflicting clinical evidence. The ALJ plainly did not do so here.

26 2. Dr. Uber-Zak.

27 Similarly, the ALJ failed to discuss or even mention the report, findings and
 28 opinions of Dr. Lori Uber-Zak, D.O., M.P.I., a neurologist. She completed a statement

1 dated October 8, 2007 that Plaintiff had a medically verifiable condition that “would limit
 2 or prevent him/her from performing certain tasks.” (AR 259.) Dr. Uber-Zak described
 3 Plaintiff’s condition as “acute” and noted she had “limitations that affect his/her ability to
 4 work or participate in education or training.” (AR 259.) Dr. Uber-Zak also administered
 5 an EEG test on September 11, 2007 and concluded that Plaintiff probably suffered from
 6 non-epileptic spells (pseudo seizures) which are “mostly commonly a form of conversion
 7 or dissociative disorder in patients with a history of emotionally traumatic experiences.”
 8 (AR 290.)

9 The Commissioner asserts that Dr. Uber-Zak’s report lacks objective basis but
 10 again this Court cannot consider any argument not appearing in the ALJ decision.
 11 Connett, 340 F.3d at 874. The Commissioner also notes the physical RFC assessments
 12 of State reviewing physicians who indicated Plaintiff had no exertional impairments but
 13 this evidence (5F, 9F) does not appear in the ALJ decision and does not relieve the ALJ
 14 of providing specific, legitimate reasons for discounting Dr. Uber-Zak’s opinion. Thomas,
 15 278 F.3d at 957. The Commissioner also contends that Dr. Uber-Zak’s opinion is not
 16 relevant because it precedes the July 24, 2009 SSI application date. Yet the ALJ
 17 repeatedly cites evidence before that date in his decision, presumably because of how it
 18 might bear on Plaintiff’s condition after July 24, 2009. The Commissioner cannot have it
 19 both ways. The ALJ failed to present specific, legitimate reasons for rejecting Dr. Uber-
 20 Zak’s opinion.

21 3. The Record Is Not Fully Developed

22 Apart from the error in not addressing the reports and opinions of Dr. Bierdrager
 23 and Dr. Uber-Zak, the record here is not fully developed. In Social Security cases, the
 24 ALJ has a special, independent duty to develop the record fully and fairly and to assure
 25 that the Claimant’s interests are considered. Tonapetyan v. Halter, 242 F.3d 1144, 1150
 26 (9th Cir. 2001); Smolen, 80 F.3d at 1288; Brown v. Heckler, 713 F.2d at 441, 443 (9th
 27 Cir. 1983). The ALJ has a basic duty to inform himself about facts relevant to his
 28 decision. Heckler v. Campbell, 461 U.S. 458, 471 n.1 (1983) (Brennan, J., concurring).

1 The ALJ's duty to develop the record exists even when the claimant is represented by
2 counsel. Tonapetyan, 242 F.3d at 1150. Ambiguous evidence or the ALJ's own finding
3 that the record is inadequate to allow for proper evaluation of the evidence triggers the
4 ALJ's duty to conduct an appropriate inquiry. Smolen, 80 F.3d at 1288; Tonapetyan,
5 242 F.3d at 1150.

6 In particular, the Court has concerns about the ALJ's conclusory determination
7 that Plaintiff has no functional limitations due to her mental impairments of confusion and
8 memory loss. (AR 11.) Dr. Bierdrager's opinion obviously is in conflict with this finding.
9 The Court directs the ALJ on remand to obtain any relevant records from Dr. Bierdrager
10 and San Bernardino County Mental Health Department (which should resolve the
11 Commissioner's concerns about the nature and extent of Dr. Bierdrager's treating
12 relationship with Plaintiff). Additionally, Dr. Uber-Zak observed that non-epileptic spells
13 "are mostly commonly a form of conversion or dissociative disorder in patients with a
14 history of emotionally traumatic experiences." (AR 290.) The Commissioner does not
15 mention this opinion. The Court directs the ALJ on remand to contact Dr. Uber-Zak and
16 obtain all relevant documents from her and from Loma Linda University Medical Center.

17 The Commissioner, ALJ and the State reviewing physician (Dr. G. Taylor Holmes
18 at AR 376) all acknowledge Plaintiff's memory issues but say her memory problems are
19 secondary to her seizure disorder and she has never been referred to a mental health
20 specialist nor is there any history of mental health issues. (AR 376.) Dr. Holmes,
21 however, was relying on Plaintiff's statement that her memory problems were secondary
22 to her seizures and Dr. Bierdrager appears to be a Ph.D. psychologist. Moreover, there
23 does not appear to have been any psychological testing to determine the extent of
24 Plaintiff's memory and confusion issues, whether or not they are secondary to her
25 seizure disorder. The lack of testing undermines the ALJ's conclusory determination
26 that Plaintiff has no limitations due to memory and confusion. On remand, the ALJ
27 should develop objective medical evidence to determine the extent of Plaintiff's
28 limitations due to memory loss and confusion, and if they result in more than minimal

1 limitations in the ability to perform basic work activities, consider those limitations in
 2 combination with her other impairments in determining Plaintiff's RFC.

3 The Court also is concerned about medication side effects and their possible
 4 relationship to Plaintiff's memory and confusion issues. Although the Commissioner
 5 argues that none of Plaintiff's doctors found Plaintiff had medication side effects, the ALJ
 6 specifically found that Plaintiff's primary care physician thought Plaintiff's seizures or
 7 blackouts could be due to her anti-hypertensive medication. (AR 13.) The
 8 Commissioner contends that Plaintiff's seizures are well controlled with medications but
 9 the ALJ found that Claimant still had numbness, tingling and auras. (AR 13.) Claimant
 10 also suffered another seizure or blackout in 2010 (AR 388, 13) that neither the ALJ nor
 11 the Commissioner discusses. The ALJ and the Commissioner both seem content to
 12 conclude Plaintiff's seizures are non-epileptic (which the evidence supports) but
 13 nowhere is there any explanation for Plaintiff's seizures or blackouts and the only RFC
 14 assessments are from State reviewing physicians who never examined Plaintiff or
 15 treating physicians the ALJ never mentioned in his decision. The Court instructs the ALJ
 16 on remand to obtain both a mental RFC and a physical RFC from physicians who
 17 actually examine Plaintiff.

18 Finally, the ALJ decision makes a conclusory determination that Plaintiff is not
 19 credible to the extent her alleged symptoms are inconsistent with the ALJ's RFC (AR 13)
 20 but cites no reasons or evidence other than the medical evidence which by itself legally
 21 cannot suffice even if fully credited. See Burch v. Barnhart, 400 F.3d 676, 680-81 (9th
 22 Cir. 2005) (ALJ may consider a lack of medical evidence corroborating Plaintiff's
 23 symptoms in evaluating credibility so long as it is not the only reason for discounting
 24 credibility). The Commissioner tries to squeeze other justifications out of the ALJ
 25 decision to support the ALJ's adverse credibility determination but either the Court
 26 cannot consider them, Connett, 340 F.3d at 874, or they are now in doubt in view of the
 27 Court's ruling above. The ALJ on remand must provide clear and convincing reasons for
 28 any adverse credibility determination. Thomas, 278 F.3d at 958.

ORDER

IT IS HEREBY ORDERED that Judgment be entered reversing the decision of the Commissioner of Social Security and remanding this case for further proceedings in accordance with this Memorandum Opinion and Order and with law.

DATED: March 6, 2014

/s/ John E. McDermott
JOHN E. McDERMOTT
UNITED STATES MAGISTRATE JUDGE